IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. _____

EFRAIN T. SUAREZ,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

APPENDIX A

Onelio Garcia RODRIQUEZ, Efrain T. Suarez, Julieta Maria Calleiro, Abigail Margarita Calleiro Casanueva and Yolanda Venegas Calleiro, Appellant,

v.

The STATE of Florida, Appellee.

Nos. 65-59, 65-60, 65-256 to 65-258.

District Court of Appeal of Florida.

Third District.

June 29, 1966.

On Denial of Rehearing in No. 65-60

Sept. 20, 1966.

Prosecution for conspiracy to commit abortion and attempted abortion. The Criminal Court of Record, Dade County, Gene Williams, J., entered judgment convicting all defendants of conspiracy to commit abortion and, in addition, convicting one defendant of attempted abortion, and appeals were taken. The District Court of Appeal held that officers who, immediately prior to entry into medical clinic, were informed by policewoman that another policewoman was inside clinic and that defendant was going to "stick her with a needle" had reasonable cause to believe that policewoman within clinic was in imminent peril of bodily harm and were thus justified, after announcing their authority and waiting for response at waiting room door, in breaking open interior doors without announcing their authority.

Judgments of conviction for conspiracy to commit

abortion reversed; judgment of conviction for attempted abortion affirmed.

Swann, J., dissented in part.

Walter E. Gwinn, Miami, for appellants.

Earl Faircloth, Atty. Gen., and Arden M. Siegendorf, Asst. Atty. Gen., for appellee.

Before PEARSON, BARKDULL and SWANN, JJ.

SWANN, Judge.

This is a consolidated appeal from judgments and sentences entered following a jury trial in the Criminal Court of Record of Dade County, Florida.

Essentially, the facts are that two policewomen from Tampa, Florida were enlisted by the City of Miami Police Department and the State Attorney's Office of Dade County, Florida, to try to get into the Ayala Clinic and make arrangements for an abortion. Policewoman Williams called the Ayala Clinic about an abortion and talked to a person who identified himself as Dr. Ayala. The policewoman made an appointment for the following day and was quoted a price of One Thousand Dollars for the operation. On the appointed day, Policewoman Williams and Policewoman Ellison entered the clinic and consulted with a man later identified as the appellant Suarez. At the same time, other police officers were watching the front and back of the clinic. Policewoman Ellison waited in the reception room

while Policewoman Williams was taken into an examination room, where a pelvic examination was conducted by the appellant Suarez. There were no instruments used in the examination and there was a conflict in the testimony as to whether there were any instruments in the examining room at the time of the examination. Policewoman Williams remained fully clothed at all times, with the exception of her panties, which were removed during the examination. Following the examination, appellant Suarez explained the procedure by which he was to bring about the abortion. At this point, Policewoman Williams told Suarez that the money required for the operation was in her purse which Policewoman Ellison was holding in the waiting room. Policewoman Ellison brought the money into the examination room and it was given to Suarez. She then left the building and informed the officers outside that Policewoman Williams was supposed "to get a needle".

The police officers entered the clinic through the public front door, which was left open by Policewoman Ellison, and proceeded into the clinic. Upon reaching the waiting room door, the officers knocked and announced that they were police officers and from the State Attorney's office. After waiting approximately fifteen to thirty seconds, the officers kicked down the door. They had no search warrant for the premises nor warrants for arrest. No announcement of purpose was made prior to kicking down the door. The officers proceeded down a hallway and came upon another door, which was also kicked down without announcement of authority or purpose. There was testimony that approximately five doors were kicked down without an announcement of their purpose.

The officers met Suarez in the hallway coming toward

them from the direction of the first door that was kicked down. He was placed under arrest for conspiracy to commit an abortion and attempted abortion on Policewoman Williams. The other appellants were arrested when found in various parts of the clinic.

The appellants were tried for attempted abortion and conspiracy to commit abortion. All of the appellants were convicted of conspiracy to commit abortion, and in addition, Suarez was convicted of attempted abortion. This appeal followed.

Prior to the trial, the appellants moved to suppress the evidence seized in the raid and the trial court denied the motion. The appellants have assigned this as error and assert as authority for reversal Section 901.19(1), Florida Statutes, F.S.A., and Benefield v. State, Fla.1964, 160 So.2d 706.

Section 901.19(1) provides:

> "An officer, in order to make an arrest either by virtue of a warrant, or when authorized to make such arrest for a felony without a warrant, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance *after he has announced his authority and purpose.*" (Emphasis supplied)

The State concedes that the arresting officers did not announce their purpose before breaking open the doors in the building.

In Benefield, supra, the Supreme Court of Florida set forth the requirements for entry of a building to make an arrest:

* * * * *

"* * * When an officer is authorized to make an arrest in any building, he should first approach the entrance to the building. He should then knock on the door and announce his name and authority, sheriff, deputy sheriff, policeman or other legal authority and *what his purpose is in being there.* * * * If he is refused admission * * * he may then break open a door or window to gain admission to the building and make the arrest. * * *" (Emphasis supplied.)

* * * * *

"* * * The law forbids the law enforcement officers of the state or the United States to enter before knocking at the door, giving his name and the *purpose of his call.* * * *" (Emphasis supplied.)

* * * * *

The appellee counters that the court in Benefield, supra, clearly sets forth four specific exceptions to this rule on page 710 as follows:

* * * * *

"As we interpret the common law authorities in relation to § 901.19(1), Florida Statutes, F.S.A., we conclude that even if probable cause exists for the arrest of a person, *our statute is violated by an un-*

announced intrusion in the form of a breaking and entering any building, including a private home, except (1) where the person within already knows of the officer's authority and purpose; (2) *where the officers are justified in the belief that the persons within are in imminent peril of bodily harm;* (3) if the officer's peril would have been increased had he demanded entrance and stated the purpose, or (4) where those within made aware of the presence of someone outside are then engaged in activities which justify the officers in the belief that an escape or destruction of evidence is being attempted. Time and experience will no doubt suggest other exceptions * * *." (Emphasis supplied)

* * * * *

It is contended by the appellee that under the second exception set forth above the officers were justified in their actions since they believed that the policewoman within the clinic was in imminent peril of bodily harm.

The only possible evidence to justify such a belief was the statement made by Policewoman Ellison to the arresting officers that "he is going to stick her with a needle."

The arresting officers knew and the policewoman testified that if any attempt was made to begin an abortion that she should place him (Suarez) under arrest. The testimony further reveals that there was never any indication that a needle was about to be given to Policewoman Williams in the presence of Policewoman Ellison or that Suarez attempted to give her a shot.

None of the officers testified that they believed Policewoman Williams was in "imminent peril of bodily harm". Under the particular facts in this case, there appears to be no valid reasons to justify such a belief; therefore, the general rule of Benefield should apply, and not the exception.

Since Section 901.19(1) was not complied with the fruits of the subsequent search should have been excluded by the trial court upon proper motion.

[1] While the appellee concedes that appellant Suarez had standing to challenge the validity of the search and seizure, they contend that there was no showing of the requisite possessory interest in the premises by the other appellants so as to allow them to object. There is no need to determine whether the other individual appellants had standing, since we find merit in the appellant's contention that the evidence is legally insufficient to sustain a conviction for the crime of conspiracy to commit an abortion on Policewoman Williams.

The testimony indicates that all occurrences and transactions between Policewoman Williams and Suarez were done outside the presence of the other appellants. None of the other appellants ever saw or talked to Policewoman Williams. There is no evidence that any of the other appellants knew her; or that they knew she was even in the clinic at the time of the alleged attempted abortion; or that they participated in any way in the actions toward Policewoman Williams.

While there was some testimony about medical services rendered to other persons in the clinic by some of the appel-

lants, they were not tried for any other offense, except as to the alleged conspiracy to commit an abortion on Policewoman Williams.

As there was no direct testimony to link the other appellants to the attempted abortion of Policewoman Williams, any inferences of a conspiracy to commit an abortion on her would be by purely circumstantial evidence.

[2] When circumstantial evidence is relied upon for conviction in a criminal case, the circumstances, when taken together, must be of a conclusive nature and tendency, leading on the whole to a reasonable and moral certainty that the accused, *and no one else*, committed the offense. It is not sufficient that the facts create a strong probability of, and be consistent with guilt; they must be inconsistent with innocence. Simmons v. State, 1930, 99 Fla. 1216, 128 So. 486; Lee v. State, 1928, 96 Fla. 59, 117 So. 699; Davis v. State, 1925, 90 Fla. 816, 107 So. 245. The facts herein may have created a strong probability of guilt of conspiracy to commit abortion, but they were not consistent with guilt and inconsistent with innocence.

For the reasons stated, the judgment and convictions of the appellants of conspiracy to commit abortion should be reversed and the appellants discharged; and the judgment and conviction of the appellant Suarez of attempted abortion should be reversed and remanded for a new trial.

BARKDULL, Judge (concurring in part).

[1, 2] I concur with so much of Judge Swann's opinion that finds insufficient evidence to convict the appellants of conspiracy to commit abortion which would discharge

them from the cause. However, I am unable to agree relative to the appellant Suarez. He was convicted of attempted abortion and the opinion finds that the trial court committed error in refusing to suppress the evidence seized at the time of his apprehension.

It appears to me that the pivotal point in this record is whether or not the law enforcement officers were justified in breaking down an *inner* door of a medical clinic, after having been informed that the police woman inside was about to get a shot and abortion, thereby effecting a legal arrest rendering the evidence seized admissible.

[3-7] The question of the validity of the right of entry was properly a matter to be determined by the trial court on a motion to suppress, because what constitutes a valid arrest so as to support an incidental search is a mixed question of law and fact to be determined by the trial court upon due consideration of the circumstances and manner under which the search is made. See: Haile v. Gardner, 82 Fla. 355, 91 So. 376; Brown v. State, Fla.1950, 46 So.2d 479; Urso v. State, Fla.App.1961, 134 So.2d 810; Diaz v. State, Fla.App.1965, 181 So.2d 351. The trial court's ruling on the motion to suppress in the instant case comes to this court with a presumption of correctness and, in testing the accuracy of the trial court's conclusions, we should interpret the evidence and all reasonable inferences and deductions capable of being drawn therefrom in a light most favorable to sustain these conclusions. See: Cameron v. State, Fla.App.1959, 112 So.2d 864; Savage v. State, Fla.App.1963, 156 So.2d 566, 1959. In so doing, if the record reveals that the facts known to the arresting officers before their entry are not inconsistent with a good faith belief on their part that compliance with § 901.19(1)

Fla.Stat., F.S.A., is excused, their failure to comply with the formal requirements of said section does not justify the exclusion of the evidence they obtain. See: People v. King, 140 Cal.App. 2d 1, 294 P.2d 972; People v. Ramsey, 157 Cal.App.2d 178, 320 P.2d 592. This is so because the officers must decide this question ordinarily on the spur of the moment and without benefit of hindsight. See: Williams v. United States, 9th Cir.1959, 273 F.2d 781, Cert. denied 362 U.S. 951, 80 S.Ct. 862, 4 L.Ed.2d 868; People v. Maddox, 46 Cal.2d 301, 294 P.2d 6; People v. Morris, 157 Cal.App.2d 81, 320 P.2d 67; Reid v. United States, D.C.Mun.App.1964, 201 A.2d 867; State v. Smith, 37 N.J. 481, 181 A.2d 761, Cert. denied 374 U.S. 835, 83 S.Ct. 1879, 10 L.Ed.2d 1055. It was brought out in the evidence before the trial judge, on the motion to suppress, that immediately prior to making entry into the clinic the officers were informed " 'The doctor has the money, and Barbara is inside, and he is going to stick her with a needle.' She said the doctor was going to stick her with a needle.", and believed that the police woman was about to be injured, to wit:

* * * * *

"Q (By Mr. Gwinn) Mr. Daugherty, you knew too —you say that you wanted to make sure about Mrs. Williams, and that was it that you wanted to go in for?
"A The reason I went in hastily?

"Q Yes.
"A I wanted to make sure Mrs. Williams was not physically harmed or otherwise in any way."

* * * * *

[8] It appears to me that these facts, known to the officers at the time they broke in, are consistent with a good faith belief on their part that they were excused from compliance with § 901.19(1) Fla.Stat., F.S.A., pursuant to the second exception outlined in Benefield v. State, Fla.1964, 160 So.2d 706, which is relied upon so heavily in Judge Swann's opinion; and the officers were justified in making their entry. Furthermore, it must also be noted that in this latter cited case there was no contention that the officers at any time announced their authority nor their purpose, *whereas in the instant case the officers did announce their authority and they did wait for a response prior to breaking the interior door.*

Therefore, I would affirm the conviction of the appellant Suarez for attempted abortion.

PEARSON, Judge (specially concurring).

[1-8] I concur with so much of the opinion of Judge Swann that reversed the convictions of the appellants of the crime of conspiracy to commit abortion, and Judge Barkdull's opinion affirming the conviction of the appellant Suarez as to the crime of attempted abortion.

Therefore, the verdicts, judgments, and sentences under review in Case Nos. 65-59, 65-256, 65-257 and 65-258 be and they are hereby reversed and the appellants discharged. So much of the verdict, judgment and sentence here under review in Case. No. 65-60 as relates to the crime of conspiracy to commit abortion be and the same is hereby reversed, but so much of said verdict, judgment, and sentence as relates to the crime of attempted abortion by the appellant Suarez be and the same is hereby affirmed.

ON REHEARING in No. 65-60.

PER CURIAM.

[9] The appellant has filed a petition for rehearing, addressed to the majority opinion which affirmed his conviction upon the charge of attempted abortion. In and by the petition addressed to this opinion, it is urged that the court overlooked and failed to consider the points raised on appeal as to the sufficiency of the information to charge the crime and the sufficiency of the evidence to support the charge. These points were examined originally and have been examined subsequent to the filing of the petition for rehearing, and are found to be without merit. See: Gustine v. State, 86 Fla. 24, 97 So. 207; Urga v. State, 155 Fla. 86, 20 So.2d 685; Pittman v. State, Fla. 1950, 47 So.2d 691; People v. Berger, 131 Cal.App.2d 127, 280 P.2d 136; People v. Woods, 24 Ill.2d 154, 180 N.E.2d 475.

Therefore these and the other grounds of the petition for rehearing having been found to be insufficient, the same be and it is hereby denied.

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1967

Tuesday, January 17, 1967

Case No. 35,726

EFRAIN T. SUAREZ,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal, Third District of Florida, in said cause bearing date June 29, 1966, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

SID J. WHITE
Clerk Supreme Court.

cc: Honorable W. P. Carter
Honorable J. F. McCracken
Honorable Arden M. Siegendorf
Honorable Walter E. Gwinn

APPENDIX C

IN THE SUPREME COURT OF FLORIDA

January Term, A. D. 1967

Tuesday, February 14, 1967

Case No. 35,726

EFRAIN T. SUAREZ,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

The order of this Court dated Tuesday, January 17, 1967, is hereby revised as follows:

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon so much of the record tendered to reflect jurisdiction and briefs to review the order of the District Court of Appeal, Third District of Florida, in said cause bearing date June 29, 1966, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied for lack of jurisdiction.

The petition for rehearing filed by petitioner is visited to the revised decision as set forth above and denied.

A True Copy

TEST:

SID J. WHITE
Clerk Supreme Court.

cc: Honorable Walter E. Gwinn
Honorable Arden M. Siegendorf
Honorable W. P. Carter
Honorable J. F. McCracken

APPENDIX D

SUPREME COURT OF THE UNITED STATES

October Term, 19

No._____

EFRAIN T. SUAREZ,

Petitioner,

vs.

FLORIDA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 16th, 1967.

s Hugo L. Black
Associate Justice of the Supreme Court of the United States

Dated this 15th day of May, 1967.

APPENDIX E

SUPREME COURT OF FLORIDA.

Feb. 12, 1964

No. 32506.

J. C. BENEFIELD,

Petitioner,

v.

The STATE of Florida,

Respondent.

The defendant was convicted in the Circuit Court for Pinellas County, John U. Bird, J., of attempted grand larceny, and he appealed. The District Court of Appeal, 151 So.2d 650, affirmed, and the defendant brought certiorari. The Supreme Court held that lawfulness of arrest without warrant was vitiated by arresting officers' entry of defendant's home without announcement of authority and purpose, although arrest might have been based on probable cause.

Decision of District Court of Appeal quashed; cause remanded thereto for further consideration.

Thomas and O'Connell, JJ., dissented.

Fogle, Wilson & Shingler, St. Petersburg, and Lindsey & Cargell, St. Petersburg Beach, for petitioner.

James W. Kynes, Atty. Gen., and James G. Mahorner, Asst. Atty. Gen., for respondent.

TERRELL, Justice.

Petitioner, J. C. Benefield, was informed against for grand larceny. He was tried by a jury and convicted of attempt to commit grand larceny. On appeal his conviction was affirmed by the District Court of Appeal, Second District. Petitioner now seeks review of the latter judgment by certiorari on the theory that it is in direct conflict with this court's decision in Dickens v. State, Fla.1952, 59 So.2d 775.

[1] It is clear from an examination of the opinions in the case at bar and the Dickens case that although both involve substantially the same controlling facts, identical rules of law were applied to each in such a way as to produce opposite results. That is sufficient to activate this court's jurisdiction. See Nielsen v. City of Sarasota, Fla. 1960, 117 So.2d 731.

If there are those who do not think we have jurisdiction on this theory, certainly we have it on the theory that the decision of the district court of appeal herein has generated confusion and instability among the precedents rendering the law "unclear, if not in conflict," as we said in Trustees of the Internal Improvement Fund v. LoBean, Fla.1961, 127 So.2d 98. For additional authorities see Justice Thornal's opinion in Kyle v. Kyle, Fla.1962, 139 So.2d 885, and Justice Hobson's special concurrence in King v. State, Fla.1962, 143 So.2d 458, and his opinion in Pinkerton-Hays Lumber Co. v. Pope, Fla.1961, 127 So.2d 441.

The essential facts in the case are as follows: Petitioner is alleged to have approached Hollander and Rosenthal, operators of a bowling alley located in St. Petersburg,

and offered to help them secure a liquor license if they would pay him $5,000 in small bills. On April 27, 1961, Hollander and Rosenthal, after notifying the St. Petersburg Times and the St. Petersburg police department and securing certain marked money from their attorney, went to the petitioner's office. The petitioner was not at his office but was at home sick so they proceeded to his home in St. Petersburg. They were accompanied by two city detectives who waited outside while Hollander and Rosenthal entered the petitioner's home for the purpose of delivering the marked money to him. Upon completion of the transaction with petitioner, Hollander and Rosenthal left the house. One of the police officers, Sgt. Hooper, approached Hollander and Rosenthal just as they left the doorway. The sergeant asked Hollander if the petitioner had the money. Hollander nodded yes. The police officer then "stepped inside the door," asked petitioner's wife if the petitioner was home and if he could see him, walked back to the petitioner's bedroom, and after identifying himself to the petitioner, placed the petitioner under arrest. Sgt. Hooper further testified that when he entered the front door it was open, that Hollander was holding it open, and that he stepped inside before he saw petitioner's wife.

Hollander testified that he did not hold the door open for the officers, and petitioner's wife testified that by the time she had reached the hall, Sgt. Hooper had opened the door and was standing inside.

The record discloses that the two arresting officers made no announcement of their authority and purpose before entering petitioner's home; in fact, this was not done until the officers entered petitioner's bedroom at the rear

of the home. The trial judge himself noted that the officers were not inside the home with the permission of petitioner or his wife.

On May 11, 1961, petitioner made timely motion to suppress the introduction of the marked money on the ground that it was secured by an unlawful search and seizure. Said motion was denied by the trial court on August 17, 1961, after hearing testimony and arguments of counsel.

It is clear from the record that the police officers did not have a search warrant or a warrant for petitioner's arrest and that the search for the money took place subsequent to petitioner's arrest.

The district court of appeal held that because the police officers had reasonable grounds to believe that petitioner had committed a felony, his arrest without a warrant was authorized by § 901.15, Florida Statutes, F.S.A., and thus valid. Said holding of the district court of appeal might have been a correct interpretation of § 901.15 if the officers had found petitioner out on the commons and were attempting to arrest him. In this case petitioner was in his home and the officers were proceeding under § 901.19(1), Florida Statutes, F.S.A. They were bound by the requirements of that act and what we have said here relates to the execution of it. There was no attempt whatever to comply with § 901.19(1), Florida Statutes, F.S.A., and the two acts relate to a different kind of arrest.

[2-4] The evidence seized, in order to be admissible at trial, must be the product of a search incident to a law-

ful arrest, since the officers had no search warrant. Mixon v. State, Fla.1951, 54 So.2d 190. The lawfulness of an arrest without warrant, in turn must be based upon probable cause, which exists, where the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been committed. Ker v. California, 1963, 374 U.S. 23, 83 S.Ct. 1623, 10 L.Ed.2d 726; Dunnavant v. State, Fla.1950, 46 So.2d 871. In the instant case the officers were in possession of the affidavits of Hollander and Rosenthal which described the petitioner's activities prior to the payoff. The officers also were aware that Hollander and Rosenthal had entered the petitioner's house for the purpose of delivering certain marked money to him. Immediately prior to their entry into petitioner's home, Hollander had informed the arresting officer that the money had been delivered. It is, therefore, clear that the officers may have had probable cause to believe a felony had been committed. Nevertheless, the question recurs, was the lawfulness of the arrest, even though based on probable cause, vitiated by the unlawful means in which the home was entered?

[5] In a recent opinion of the Supreme Court of the United States, that court recognized that the lawfulness of an arrest by a state officer for an offense against a state is to be determined by state law. Ker v. California, supra.

Section 901.19(1), the applicable Florida Statute, provides:

> "An officer, in order to make an arrest either by virtue of a warrant, or when authorized to make

> such arrest for a felony without a warrant, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be, if he is refused admittance after he has announced his authority and purpose."

[6] The facts reveal that the officers did not make the slightest effort to comply with this statute. Although there is some question as to whether or not Hollander held the door open for Sgt. Hooper, Hollander's testimony, as well as that of Mrs. Benefield, clearly discloses that the officer opened the unlocked screened door and stepped into the house. Such an entry would constitute entry by breaking. Boynton v. State, Fla.1953, 64 So.2d 536, 548, and Scott v. State, Fla.App.1962, 137 So.2d 625.

[7] It is true that the act is ambiguous and poorly drawn, but a reasonable interpretation of it runs like this: When an officer is authorized to make an arrest in any building, he should first approach the entrance to the building. He should then knock on the door and announce his name and authority, sheriff, deputy sheriff, policeman or other legal authority and what his purpose is in being there. If he is admitted and has a warrant, he may proceed to serve it. He is not authorized to be there to make an arrest unless he has a warrant or is authorized to arrest for a felony without a warrant. If he is refused admission and is armed with a warrant or has authority to arrest for a felony without a warrant, he may then break open a door or window to gain admission to the building and make the arrest. If the building happens to be one's home, these requirements should be strictly observed.

[8] Entering one's home without legal authority and

neglect to give the occupants notice have been condemned by the law and the common custom of this country and England from time immemorial. It was condemned by the yearbooks of Edward IV, before the discovery of this country by Columbus. Judge Prettyman for the Court of Appeals in Accarino v. United States, 85 U.S.App.D.C. 394, 179 F.2d 456, 465, discussed the history and reasons for it. See also 22 Mich.L.Rev. 541, 673, 798, "Arrest Without a Warrant," by Wilgus. William Pitt categorized a man's home as his castle. Paraphrasing one of his speeches in which he apostrophized the home, it was said in about this fashion: The poorest pioneer in his log cabin may bid defiance to the forces of the crown. It may be located so far in the backwoods that the sun rises this side of it; it may be unsteady; the roof may leak; the wind may blow through it; the cold may penetrate it and his dog may sleep beneath the front steps, but it is his castle that the king may not enter and his men dare not cross the threshold without his permission.

This sentiment has moulded our concept of the home as one's castle as well as the law to protect it. The law forbids the law enforcement officers of the state or the United States to enter before knocking at the door, giving his name and the purpose of his call. There is nothing more terrifying to the occupants than to be suddenly confronted in the privacy of their home by a police officer decorated with guns and the insignia of his office. This is why the law protects its entrance so rigidly. The law so interpreted is nothing more than another expression of the moral emphasis placed on liberty and the sanctity of the home in a free country. Liberty without virtue is much like a spirited horse, apt to go berserk on slight provocation if not restrained by a severe bit.

In this case the officers totally ignored every requirement of the law as above interpreted. They barged into petitioner's home without knocking or giving any notice whatever of their presence; they did not have a search warrant or warrant to arrest anyone; they ransacked petitioner's home without the least semblance of any showing of authority. The petitioner was in bed sick at the time and the officers knew it. For all the record shows, there is no material difference in the entrance here from that in the Dickens case. In that case they entered the back door without permission, while in this case they entered the front door without permission. They were trespassers in both cases. They completely ignored every requirement of § 901.19(1), Florida Statutes, F.S.A., so everything they did inside the home was done as trespassers in total disregard of the responsibility the law imposed on them to knock, give notice and the purpose of their mission. We do not attempt to prescribe what would constitute a reasonable search except to say that what was done here was unreasonable under any standard that would be approved by a free country.

The state argues that the Ker case, supra, involved a California statute similar to § 901.19, Florida Statutes, F.S.A., permitted an unannounced entry because of the fact that the evidence [narcotics] could have easily been destroyed.

As we interpret the Ker decision, the majority of the court held that California had engrafted certain judicial exceptions to their statute and that these exceptions did not violate federal constitutional standards of reasonableness. Even if we had authority to do so, we find no reason to engraft judicial exceptions on the statute in this case.

If these amount to amendments to the common law rule, they would have to be done by statute in this state.

Section 901.19, Florida Statutes, F.S.A., like its counterpart California statute, appears to represent a codification of the English common law which recognized the fundamental sanctity of one's home yet nevertheless provides that an arresting officer "may break open doors, if the party refused upon demand to open them." 1 Hales Pleas of the Crown (1763) 583; see also Justice Brennan's dissent in Ker v. California, supra. The California judicial exceptions to their statute merely represents the recognition of certain established exceptions to the common law rule. As the California court pointed out in the case of People v. Maddox, 1956, 46 Cal.2d 301, 294 P.2d 6, cert. den. 352 U.S. 858, 77 S.Ct. 81, 1 L.Ed.2d 65:

> "It must be borne in mind that the primary purpose of the constitutional guarantees is to prevent unreasonable invasions of the security of the people in their persons, houses, papers, and effects, and when an officer has reasonable cause to enter a dwelling and to make an arrest and as an incident to that arrest is authorized to make a reasonable search, his entry and his search are not unreasonable. [7] Suspects have no constitutional right to destroy or dispose of evidence, and no basic constitutional guarantees are violated because an officer succeeds in getting to a place where he is entitled to be more quickly than he would, had he complied with section 844. [8] Moreover, since the demand and explanation requirements of section 844 are a codification of the common law, they may reasonably be inter-

preted as limited by the common law rules that compliance is not required if the officer's peril would have been increased or the arrest frustrated had he demanded entrance and stated his purpose. Read v. Case, 4 Conn. 166, 170 [10 Am.Dec. 110]; see, Restatement, Torts, § 306, comment d. Without the benefit of hindsight and ordinarily on the spur of the moment, the officer must decide these questions in the first instance."

[9] As we interpret the common law authorities in relation to § 901.19(1), Florida Statutes, F.S.A., we conclude that even if probable cause exists for the arrest of a person, our statute is violated by an unannounced intrusion in the form of a breaking and entering any building, including a private home, except (1) where the person within already knows of the officer's authority and purpose; (2) where the officers are justified in the belief that the persons within are in imminent peril of bodily harm; (3) if the officer's peril would have been increased had he demanded entrance and stated the purpose, or (4) where those within made aware of the presence of someone outside are then engaged in activities which justify the officers in the belief that an escape or destruction of evidence is being attempted. Time and experience will no doubt suggest other exceptions, but when the facts of this case are measured against the statutory criteria and its exceptions, it is clear that the unannounced entry of the officers in this case violated the statute and vitiated the arrest made pursuant to probable cause without warrant.

In reaching this conclusion, we have not overlooked the state's argument that the marked money could have easily been disposed of by the classic method of flushing it

down the drain. This argument must be rejected in the face of the practical difficulties inherent in disposing of $3,000 in small bills by that method. Under the peculiar facts of this case, we are convinced that § 901.19(1), Florida Statutes, F.S.A., was violated and that its violation is not excused by any of the exceptions discussed herein and for this reason the fruits of the search being the product of an unlawful arrest and a search incident thereto, should have been excluded by the trial court upon proper motion. Such disposition of this case brings it into harmony with our decision of Dickens v. State, supra, wherein we held:

> "When an arresting officer enters one's back door for the purpose of searching the premises and to make an arrest without a search warrant he is little more than a trespasser."

Miller v. United States, 1958, 357 U.S. 301, 78 S.Ct. 1190, 2 L.Ed.2d 1332, is very similar to the case at bar. Miller was convicted in the District Court, District of Columbia for violating federal narcotic laws. He sought to suppress evidence consisting of marked currency found in his apartment after his arrest. His contention was that the currency was unlawfully seized, since its seizure followed the breaking of his door by police officers who sought to arrest him without a warrant and the officers, before breaking the door, had not informed him of their purpose in demanding admission. The conviction was affirmed by the United States Court of Appeals for the District of Columbia, 100 U.S.App.D.C. 302, 244 F.2d 750. On certiorari the United States Supreme Court reversed the conviction. Justice Brennan, speaking for six justices, held that the arrest was unlawful and the currency seized thereafter inadmissible in evidence since the police officers had not

expressly demanded admission or stated the purpose of their presence before breaking defendant's door, and the evidence did not warrant a finding that the facts known to the officers justified them in being virtually certain that defendant knew their purpose so that an announcement thereof would have been a useless gesture.

For the reasons above stated, the decision of the district court of appeal herein is quashed and this cause is remanded to said court for further consideration not inconsistent with the decision herein.

PER CURIAM.

The foregoing opinion and judgment by TERRELL, J., prepared prior to his death on January 12, 1964, is hereby adopted as the opinion and judgment of this Court.

It is so ordered.

DREW, C. J., and ROBERTS, THORNAL, CALDWELL, and HOBSON (Ret.), JJ., concur.

THOMAS and O'CONNELL, JJ., dissent.